Oct Term April 19 1882

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 385.

THE AMOSKEAG NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

THE TOWN OF OTTAWA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED AUGUST 23, 1879.

15

SUPREME COURT OF THE UNITED STATES.

No. 235.

THE AMOSKEAG NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

THE TOWN OF OTTAWA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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returnable to the October term, 1876, of said court and directed to the marshal of said district to execute. Damages $20,000.

WILSON AND PERRY,
Att'ys for Plaintiff.

CHICAGO, *July* 18, 1876.

(Endorsed:) Filed July 18, 1876. Wm. H. Bradley, cl'k.

And on the same day, to wit, the 18th day of July, A. D. 1876, a writ of summons issued out of said clerk's office in said-entitled cause; which said writ, with the return of the marshal annexed thereto, is in the words and figures following, to wit:

Writ of summons.

Circuit court of the United States of America, northern district of Illinois, ss.

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Town of Ottawa, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois on the first day of the next term thereof, to be holden at Chicago, in the district
4 aforesaid, on the first Monday of October next, to answer unto Amoskeag National Bank of a plea of trespass on the case upon promises, to the damage, as it alleges, of twenty thousand dollars; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 18th day of July, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the 101st year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Special deputy's return.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Know all men by these presents that I have appointed, and by these presents do appoint, A. C. McIntire my true and lawful deputy to execute the annexed writ, Amoskeag Nat. Bank vs. Town of Ottawa, and to make return of the execution thereof according to law.

B. H. CAMPBELL, [SEAL.]
United States Marshal for the Northern District of Illinois.

5 I have served the annexed writ in the following manner, to wit, by delivering a true copy thereof to John G. Armstrong, clerk of the Town of Ottawa, this 14th day of September, 1876. I also served the within writ on the within Town of Ottawa by delivering a true copy to John Stout, one of the supervisors of the within Town of Ottawa, this 23d day of September, 1876.

B. H. CAMPBELL,
United States Marshal,
By A. C. McINTIRE,
Special Deputy.

A. C. McIntire, being duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return, and that the expense returned by him in addition to the fees was actually incurred, and that the same is according to law. Sworn to before me this 25th day of September, A. D. 1876.

[SEAL.] D. McDOUGALL,
United States Commissioner for the Northern District of Illinois.

(Endorsed:) Filed Sept. 27th, A. D. 1876. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 21st day of July, A. D. 1876, said plaintiff, by its attorneys, filed in said clerk's office its declaration in said entitled cause; which said declaration is in the words and figures following, to wit:

Declaration.

6 Circuit court of the United States, northern district of Illinois, of the October term, A. D. 1876.

The Amoskeag National Bank, a corporation created by and existing under the acts of Congress, and having its location and principal place of business at Manchester, in the State of New Hampshire, plaintiff in this suit, by Wilson and Perry, its attorneys, complains of the Town of Ottawa, a municipal corporation and body politic created by and existing under the laws of the State of Illinois, being a town in the county of La Salle, in said State of Illinois, and within the northern district aforesaid, defendant in this suit, being summoned, &c., in a plea of trespass on the case upon promises.

For that whereas heretofore, to wit, on the first day of May, eighteen hundred and sixty-nine, to wit, at and within said northern district of Illinois, the said defendant, by its duly authorized officers and agents in that behalf, made its certain instrument in writing, commonly called a town bond, numbered 18, in and by which said bond the said defendant acknowledged itself to be indebted in the sum of one thousand dollars, which sum it promised to pay to the Ottawa, Oswego and Fox River Valley Railroad Company, or bearer, at the Fourth Na-
7 tional Bank, in the city of New York, seven years from the first day of July, A. D. 1869, to wit, on the first day of July, A. D. 1876, with interest thereon from the first day of July, A. D. 1869, at the rate of ten per cent. per annum, payable annually at said bank upon the presentation and delivery of the several coupons annexed to said bonds, as they should respectively become due.

That after the making of said bond, to wit, on the day and year last aforesaid, it was by said defendant delivered to the said Ottawa, Oswego and Fox River Valley Railroad Company (a corporation organized and existing under and by virtue of the laws of the State of Illinois) and was, by said company, put on the market for sale, and was, to wit, on the day and year last aforesaid, and long before its maturity, purchased by said plaintiff for value by said plaintiff paid therefor.

By means whereof the said defendant became liable to pay to said plaintiff the sum of money therein specified with interest thereon, as specified in said instrument, at maturity; and in consideration thereof, afterwards, to wit, on the day and year last aforesaid, to wit, at and within said northern district, promised said plaintiff to pay said plaintiff the same according to the tenor of said instrument; yet, though requested, it has not paid the same nor any part thereof.

8 2nd. And also for that whereas heretofore, to wit, on the first day of May, eighteen hundred and sixty-nine, to wit, at and within said northern district of Illinois, the said defendant, by its duly authorized officers and agents, and in pursuance of the then existing laws of the State of Illinois, made, executed, and delivered to the Ottawa, Oswego and Fox River Valley Railroad Company, a corporation then existing under and by virtue of the laws of the State of Illinois, its certain, to wit, one hundred evidences of indebtedness numbered respectively from one to one hundred inclusive, commonly called town bonds, signed by William Reddick, supervisor, and Benjamin Armstrong, town clerk, said Reddick and Armstrong being then respectively the supervisor and town clerk of said defendant, and then and there, in and by each of said evidences of indebtedness, acknowledged itself to be indebted in the sum of one thousand dollars, which sums it promised to pay to the Ottawa, Oswego and Fox River Valley Railroad Company, or bearer, at the Fourth National Bank in the city of New York, at the times specified in said bonds respectively, with interest thereon from the first day of July, A. D. 1869, at the rate of ten per cent. per annum, payable annually, at said bank, until the ma-
9 turity of said bonds, upon the presentation and delivery of the several coupons annexed to said bonds, as they should respectively become due.

That to each of said bonds were annexed a large number, to wit, twenty, interest warrants, commonly called coupons, which were also executed by said defendant by its duly authorized officers and agents, in and by each of which said coupons the said defendant promised to pay to the bearer thereof one hundred dollars at the Fourth National Bank, in the city of New York, on the first day of July, in the respective years when the same should be payable according to the tenor and effect of said bonds and said coupons respectively, each of said coupons bearing a number corresponding to the number of the bonds to which they were respectively annexed; which said bonds, with said coupons annexed, after their execution and delivery to said railroad company as aforesaid, and before the maturity of either thereof, to wit, on the first day of July, 1869, to wit, at Boston, in the State of Massachusetts, were put on the market and sold, transferred, and delivered by said railroad company for value to bona-fide purchasers, who thereby became the owners and bearers thereof; and that afterwards and before the commencement of this suit, to wit, on the day and year last aforesaid, a large number of said coupons, being the same hereinafter de-
10 scribed, were detached from said bonds and were purchased by and transferred to said plaintiff from said last-named purchasers for value paid by said plaintiff therefor; and said plaintiff thereby became, and still is, the bearer and owner of said coupons. That twenty of said coupons are in the words and figures following (except the numbers):

Interest warrant No. 10.

"Town of Ottawa.] [$100.

"The town of Ottawa, State of Illinois, will pay to bearer, on the first day of July, A. D. 1873, one hundred dollars, at the Fourth National Bank, in the city of New York, being one year's interest on bond numbered above.

"WILLIAM REDDICK, *Supervisor.*
"B. M. ARMSTRONG, *Town Clerk.*"

Which said coupons are numbered, respectively, 10, 13, 14, 16, 17, 18, 18, 19, 23, 24, 25, 26, 29, 39, 85, 86, 97, 98, 99, 100.

That thirty-five of said coupons are in the words and figures following (except the numbers):

Interest warrant No. 10.

"Town of Ottawa.] [$100.

"The town of Ottawa, State of Illinois, will pay to bearer, on the first day of July, A. D. 1874, one hundred dollars, at the Fourth National Bank, in the city of New York, being one year's interest on the bond numbered above.

"WILLIAM REDDICK, *Supervisor.*
"B. M. ARMSTRONG, *Town Clerk.*"

Which said coupons are numbered, respectively, 10, 13, 14, 16, 17, 18, 18, 19, 23, 24, 25, 26, 27, 28, 29, 39, 40, 69, 70, 71, 72, 73, 84, 85,
11 86, 87, 92, 93, 94, 95, 96, 97, 98, 99, 100.

That thirty-five of said coupons, so purchased by and transferred to said plaintiff as aforesaid, are in the same words and figures and the same numbers as the thirty-five last aforesaid, except the time of payment, which is the first day of July, A. D. 1875.

That thirty-five other of said coupons, so purchased by and transferred to said plaintiff as aforesaid, are in the same words and figures and the same numbers as the thirty-five last aforesaid, except the time of payment, which is the first day of July, A. D. 1876, whereby and by means of the premises aforesaid the said defendant, the said Town of Ottawa, became liable to pay to said plaintiff the several sums in each of said coupons specified, amounting in all to a large sum, to wit, the sum of twelve thousand and five hundred dollars, and in consideration thereof afterwards, to wit, on the day and year last aforesaid, to wit, at and within the said northern district of Illinois, promised the plaintiff to pay it the same according to the tenor and effect of said coupons.

Yet, although the times of payment have elapsed, the said defendant, though requested, has not paid the same nor any part thereof, but so to do have wholly neglected and refused.

3rd. And whereas also said defendant heretofore, to wit, on
12 the first day of July, A. D. 1876, at Ottawa, to wit, at and within said northern district of Illinois, became and was indebted to the plaintiff in the sum of twenty thousand dollars for money then lent by the plaintiff to the said defendant at its request; and in the like sum for money then paid by the plaintiff for the use of said defendant at its request; and in a like sum for money then received by said defendant for the use of the plaintiff; and in a like sum for money found to be due from said defendant to the plaintiff upon an account then stated between them; and in a like sum for interest then due and owing to the plaintiff from said defendant on the coupons in the second count mentioned accruing after their maturity; and in consideration thereof then and there promised the plaintiff to pay him the several sums of money aforesaid upon demand; yet the said defendant, though requested, has never paid any of said monies, but wholly neglects so to do.

By means of which said several premises the said plaintiff has sustained damages to the amount of twenty thousand dollars, and therefore brings suit, &c.

By WILSON AND TERRY,
Pl'ff's Att'ys.

The plaintiff's only cause of action is the bond, a copy of which
13 is hereto annexed marked "Exhibit A," and the 125 coupons referred to in the second count of the declaration.

Town of Ottawa to Amoskeag National Bank, Dr.

To money lent	$20,000
" money had and received	$20,000
[" money paid	$20,000
" money due on a/c stated	$20,000
" interest	$20,000

EXHIBIT A.—*Copy of bond.*

"No. 18.] UNITED STATES OF AMERICA. [$1,000.

"STATE OF ILLINOIS.

"*Ten per cent. bond.*

"Town of Ottawa.

"The town of Ottawa, in the county of La Salle, State of Illinois, acknowledges itself indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum the said town of Ottawa promises to pay to the Ottawa, Oswego and Fox River Valley Railroad Company, or to the bearer hereof, at the Fourth National Bank, in the city of New York, seven years from the first day of July, A. D. 1869, with interest from the first day of July, A. D. 1869, at the rate of ten per cent. per annum, payable annually at said bank upon the presentation and delivery of the several coupons hereto annexed as they respectively become due, and to the payment of said principal and interest in the manner aforesaid the faith and revenue
14 of said town is hereby irrevocably pledged.

"This bond is one of a series of 50 bonds bearing even date herewith, each for the sum of one thousand dollars, numbered from one to fifty inclusive, and is issued in pursuance of an election or special town meeting, held in said town on the third day of December, A. D. 1869, under and by virtue of a certain act of the legislature of the State of Illinois, approved February 18, 1857, entitled 'An act authorizing certain cities, counties, incorporated towns and townships to subscribe to the stock of certain railroads,' the said act having special reference to the said Ottawa, Oswego and Fox River Valley Railroad Company, at which election or special town meeting a majority of the legal voters participating at the same voted 'for subscription' to the capital stock of the Ottawa Oswego and Fox River Valley Railroad Company in the sum of $50,000, and to issue the bonds of said town therefor, and the said election or special town meeting was by the proper authorities then and there declared duly carried 'for subscription;' previous application in writing of fifty legal voters of said town for such an election or special town meeting, specifying the amount to be subscribed and the conditions of such subscription, having been made to the clerk of said town, and the said town clerk having called said election or special town meeting in accordance therewith, and
15 having given due notice of the time and place of holding the same, as required by law and the act aforesaid.

"In witness whereof the supervisor and town clerk of said town have hereunto set their hands and seals this first day of May, A. D. 1869.

"WILLIAM REDDICK, *Supervisor.* [SEAL.]
"BENJAMIN M. ARMSTRONG, [SEAL.]
Town Clerk."

[50 cents stamps.]

Endorsed on the back as follows:

"AUDITOR'S OFFICE, ILLINOIS,
"*Springfield, August 17th,* 1869.

"I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869.

"In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] "C. E. LIPPINCOTT, *Auditor P. A.*"

(Endorsed:) Filed July 21, 1876. Wm. H. Bradley, cl'k.

16 Afterwards, to wit, on the 5th day of October, A. D. 1876, said defendant, by Messrs. D. P. Jones and McCoy and Pratt, its attorneys, filed in said clerk's office its plea in said-entitled cause; which said plea is in the words and figures following, to wit:

Plea.

UNITED STATES OF AMERICA,
Northern District of Illinois:

In the circuit court of the United States for said district, of the October term, A. D. 1876.

THE AMOSKEAG NATIONAL BANK
vs.
THE TOWN OF OTTAWA. } Assumpsit. $20,000.00.

And the said defendant, by D. P. Jones, its attorney, comes and defends the wrong and injury, when, &c., and says that it did not undertake or promise in manner and form as the said plaintiff has above thereof complained against it, and of this it puts itself upon the country, &c.

By D. P. JONES,
Defendant's Attorney.

MCCOY AND PRATT, *of Counsel.*

(Endorsed:) Filed Oct. 5, 1876. Wm. H. Bradley, cl'k.

17 Afterwards, to wit, on the 19th day of December, A. D. 1876, in the December term of said court, in the record of the proceedings thereof in said-entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

AMOSKEAG NATIONAL BANK
v.
TOWN OF OTTAWA. } Assumpsit.

This cause having this day been called for trial, now comes the plaint-

iff, by his attorney, and upon issue joined upon the plea herein, on motion of the plaintiff's attorney, thereupon come a jury of good and lawful men, to wit, Alfred H. Cook, Guy C. Sampson, J. F. Cherney, S. S. Crocker, C. W. Rogers, Thomas A. Scott, D. J. Stewart, Thomas I. Clark, James E. McGuire, Walter R. Cornell, James S. Gyles, and A. G. Bower, who were all duly elected, tried, and sworn well and truly to try said issue, and after hearing the evidence and receiving the instructions of the court, the jury returned the following verdict, to wit: We, the jury, find the issue for the plaintiff, and assess its damages to the sum of fourteen thousand eight hundred and eighty-eight dollars and ninety-three cents.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of fourteen thousand eight hundred and eighty-eight dollars and ninety-three cents, its damages so as aforesaid assessed, together with its costs and
18 charges in this behalf expended, amounting to the sum of fifty-seven dollars.

Afterwards, to wit, on the 23d day of May, A. D. 1877, in the adjourned May term of said court in the record of the proceedings thereof in said-entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

AMOSKEAG NATIONAL BANK
v.
THE TOWN OF OTTAWA.

This day came again the plaintiff, by Wilson and Perry, its attorneys, and the defendant, by R. W. Pike, its attorney therefor, and on motion of the defendant's attorney, and in pursuance of previous stipulation made herein, the judgment heretofore entered in this cause is set aside and the defendant allowed to plead thereto.

Afterwards, to wit, on the 22d day of June, A. D. 1878, in the adjourned May term of said court, in the record of the proceedings thereof in said-entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE AMOSKEAG NATIONAL BANK
v.
THE TOWN OF OTTAWA. } Assumpsit.

By agreement of the parties, by their attorneys, it is ordered
19 by the court that this cause be set for trial on the first day of October next.

Afterwards, to wit, on the 24th day of September, A. D. 1878, said defendant, by its attorney, filed in said clerk's office its plea in said-entitled cause; which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States, for the northern district of Illinois, July term, 1878.

THE AMOSKEAG NATIONAL BANK
vs.
THE TOWN OF OTTAWA.

And the said defendant, The Town of Ottawa, by D. K. McRae, its

attorney, comes and defends the wrong and injury in the said several counts of the plaintiff's declaration set forth and complained of, when, &c., and saith that the said defendant did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country.

D. K. McRAE,
Att'y for Def't.

In the circuit court of the United States, northern district of Illinois, July term, 1878.

STATE OF ILLINOIS,
La Salle County, ss:

20 Andrew Lynch, supervisor of the town of Ottawa, being duly sworn, maketh oath that the foregoing plea of The Town of Ottawa to the declaration of the Amoskeag National Bank is true, because he says that the said defendant, The Town of Ottawa, did not execute either the bonds or the coupons sued upon, because the said officers of The Town of Ottawa who attempted to execute the same had no authority of law or otherwise to act for the said town on that behalf.

A. LYNCH,
Supervisor, Town of Ottawa.

STATE OF ILL'S, *La Salle Co.:*

Subscribed and sworn to before me this 21st day of September, 1878.
[SEAL.] P. W. STOCKELEGER,
Clerk of the County Court of La Salle County, Ill.

(Endorsed:) Filed Sept. 24, 1878. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 2d day of October, A. D. 1878, in the July term of said court, in the record of the proceedings thereof in said-entitled cause, before the Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, and the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

21 THE AMOSKEAG NATIONAL BANK *vs.* THE TOWN OF OTTAWA } Assumpsit.

Now come the parties, by their respective attorneys, and upon issue joined herein by agreement of the parties as per stipulation filed, they waive the intervention of a jury and for trial put themselves upon the court, and after hearing a part of the evidence, the hour of adjournment having arrived, the further trial of the cause is postponed until tomorrow morning.

Afterwards, to wit, on the 3d day of October, A. D. 1878, in the said July term of said court, in the record of the proceedings thereof in said-entitled cause, before the Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, and the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE AMOSKEAG NATIONAL BANK *v.* THE TOWN OF OTTAWA } Assumpsit.

Now come again the parties, by their respective attorneys, and after

hearing the concluding evidence and a part of the arguments of counsel, the hour of adjournment having arrived, the further trial of the cause is postponed until to-morrow morning.

22 Afterwards, to wit, on the 4th day of October, A. D. 1878, in the said July term of said court, in the record of the proceedings thereof in the said-entitled cause, before the Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, and the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE AMOSKEAG NATIONAL BANK
v.
THE TOWN OF OTTAWA.

Now come again the parties, by their respective attorneys, and after hearing the concluding arguments of counsel, the court takes the cause under advisement.

23 Afterwards, to wit, on the 30th day of July, A. D. 1879, in the July term of said court, in the record of the proceedings thereof in said-entitled cause, before the Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, and the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE AMOSKEAG NATIONAL BANK
v.
TOWN OF OTTAWA.

This cause having been heretofore submitted, upon written stipulation of parties waiving the intervention of a jury, the court being now fully advised upon all the evidence herein, finds the issues for the defendant. It is thereupon considered and adjudged by the court that the defendant recover of the plaintiff its costs and charges in this behalf expended, taxed at the sum of twenty-nine dollars and sixty cents, and that execution issue therefor.

And it further appearing to the court that, upon the trial of this cause, the circuit justice and the district judge were divided in opinion as to the questions of law and fact upon which such division arose, it is thereupon further ordered by the court that special findings and certificate of evidence herein be filed and entered at large upon the record herein, and that the same be made a part of the record in this cause.

24 AMOSKEAG NATIONAL BANK
vs.
TOWN OF OTTAWA.

This case having by an agreement between the parties, duly reduced to writing and filed herein, been submitted to the court for trial without the intervention of a jury, and it appearing to the court as to the questions of fact in the case that there is no contention between the parties to the suit, except as to the existence or non-existence, as a law in force, of the act of the legislature of the State of Illinois, mentioned in the recitals of the bond described in said plaintiff's declaration as the authority under which the same was issued, the said act being entitled "An act authorizing certain cities, counties, incorporated towns

and townships to subscribe to the stock of certain railroads," approved 18th February, 1857, and besides the various statutes of the State of Illinois bearing upon the subject, the following facts appear and are found by us from the evidence submitted in said cause, to wit:

First. That the constituted authorities of the defendant, regarding said act of the legislature as a law in force, and in pursuance of a vote of the legal and qualified voters of said town, did, on the third day of December, 1867, pursuant to the terms of said act and vote, subscribe in the name of the defendant to the capital stock of the Ottawa, Oswego and Fox River Valley Railroad Company the sum of fifty thou-
25 sand dollars, and on the receipt of said stock, issued and delivered to said railroad company, in payment therefor, fifty bonds of said town, of one thousand dollars each, bearing interest at the rate of ten per cent. per annum, payable annually, which were put upon the market for sale, of which the bond in suit, a true copy of which is attached to the plaintiff's declaration, is one, and from which bonds the one hundred and twenty-five interest warrants or coupons in suit were cut, true copies of which are described in the plaintiff's declaration; and the said bond and interest warrants or coupons in suit, which were read in evidence, were purchased by the plaintiff before their maturity for full value paid therefor, without any actual notice of any alleged invalidity of said act, the defendant conceding that said subscription and bonds were valid, and in pursuance of said act of February, 18, 1857, if and only in the event that said act was and became a valid statute of Illinois, in pursuance of the constitution of said State.

Second. That the bonds so issued by the defendant, before the negotiation thereof, were duly registered in the office of the auditor of public accounts of the State of Illinois, on the 17th day of August, 1869, in pursuance of an act of the legislature of said State specially providing therefor, entitled "An act to fund and provide for paying the
26 railroad debts of counties, townships, cities, and towns," in force 16th of April, 1869; that the auditor's certificate of the fact of such registration was indorsed upon each of said bonds, and at the time said bonds were so registered the supervisor of said town certified, under oath, that all the preliminary conditions required to be done to authorize the registration of such bonds had been complied with, in conformity with the terms of said law.

Third. That ever since the year 1857 there has been on file in the office of the secretary of state of the State of Illinois an enrolled law, bearing the title of the act referred to in said bonds, duly signed by the speakers of both houses of the general assembly of the State of Illinois for the year 1857, and approved by the governor of said State on the 18th day of February, 1857.

Fourth. That said enrolled laws, so deposited in the office of said secretary of state, was also published with and among the public laws of said State passed by the legislature of said State in the year 1857, in a volume published in pursuance of the laws of said State labeled "Laws of Illinois," at the end of which volume, in pursuance of a statute of that State approved 14th February, 1831, was a printed certificate of said secretary of state, stating that the laws therein contained are true and perfect copies of the enrolled laws on file in his office.

27 Fifth. That at the session of the legislature of Illinois which began 5th January, 1857, and ended at 7 a. m. on the 19th February of same year, the secretary of the senate, with the aid of his assistants, in accordance with the general usage before and after that time, kept minutes of the proceedings of that body, during each day,

as the business progressed, and after the close of the session for the day made up from these minutes the journal of the proceedings for that day, on paper prepared for that purpose, fastening the whole together at the top; which journal, so kept and made up, was the full and complete journal of the proceedings of the senate for that day, and was the original journal of the senate—which the plaintiff claims it was the duty of the secretary of the senate, under the law then in force, to deposit within ten days after the adjournment of the legislature, in the office of the secretary of state, and the journal which it was the duty of the secretary of state to cause to be copied into a "well-bound book," by such person as the secretary of state should contract with to do said copying, under the provisions of sections two, three, and four of the act of the legislature of said State, entitled "An act to provide for copying and distributing the laws and journals, and for other purposes," approved 12th February, 1849; that in pursuance of said law the secretary of state did provide the proper books, and cause the said
28 journal of the senate to be copied therein, and said books still remain in the office of the secretary of state of the State of Illinois. But the court further finds that the persons who so copied said journals of the senate and of the house of representatives for the year 1857 into said books were not charged by law with the duty of copying said journal in said books; and the court further finds that said copies were not compared with the original by the secretary of state, nor do they appear to have been compared by any sworn officers of the State except as herein stated.

The court further finds in this connection that John S. Roberts, who was in the winter of 1857 the principal enrolling and engrossing clerk of the senate, in conjunction with Mr. Higbee, an employee in the senate, either copied himself or in a general way superintended the coping of the journals for 1857. One Coleard had the contract for such copying, and was under bonds to do the same. He failed to perform the contract. Roberts and Higbie applied to the secretary of state for permission to do the work. That officer replied that he didn't care who did the work; that he held Coleard's sureties responsible, and that if the sureties did not object, he would not. The sureties assented to Roberts and Higbie having charge of the copying, and they took charge thereof. The journals of the senate were handed to Messrs. Roberts and Higbie, by request of the secretary of state, to be copied into the well-bound book.

29 Sixth. That said books so purporting to be a copy of the journal of the senate for the year 1857, and made in pursuance of said act of 12th February, 1849, show that on the 14th day of February, 1857, a message was received by the senate from the house of representatives, stating that the house had passed a bill with the following title, to wit: "A bill for an act authorizing certain cities, counties, incorporated towns and townships to subscribe to the stock of certain railroads," and requested the concurrence of the senate in the passage of said bill; that on the 16th day of February, 1857, the said bill was taken up by the senate, read the first time, ordered to a second reading, the rules suspended and read a second time and referred to the committee on banks and corporations; and that said copy of said journal shows no other action of the senate in regard to said bill.

Seventh. That it also appears from a similar well-bound book, in like manner purporting to be a copy of the journal of the house of representatives for the year 1857, that on the 17th day of February, 1857, a message was received by the house from the senate, through the assistant

secretary of the senate, returning said bill to the house, and informing the house that the senate had concurred with the house in the passage of said bill; that on the same day the committee of the house
30 on enrolled and engrossed bills reported said bill to the house as correctly enrolled; that said bill was afterwards duly signed by the speaker of the house and president of the senate, and duly laid before the governor for his approval, and on the 18th day of February, 1857, a message was received by the house from the governor, informing the house that the governor had approved and signed said act, and the said act was thereupon duly deposited with and filed by the secretary of state in his office as a valid statute of the State of Illinois, and so remains there on file.

Eighth. That it also appears from the evidence in this case that the senate, on the 16th day of February, 1857, passed many bills in the following manner, to wit: Several bills, to the passage of which there was no objection from any member of the senate, were read and placed together in a bundle or package, and but one call of the ayes and noes was had on the final vote on their passage; but it was the practice of the secretary of the senate, in making up the journal, to have the journal show that the ayes and noes were called on each bill separately; that it was the practice of the secretary and his assistants to make up a sheet showing the title of each bill, and the ayes and noes on its passage, with appropriate entries on that sheet or on others attached thereto, showing in detail the action of the senate in the passage of such bills, which sheets should have been fastened together in their
31 proper order and thereby make up the journal of the senate so far as it related to the passage of such bills.

Ninth. That a part of said original journals, so kept and made up from day to day by the secretary of the senate for said session of 1857, were delivered by the secretary of the senate directly to the public printer to be printed before being delivered to the secretary of state, and the greater part thereof were delivered by the said secretary of the senate upon the request of the secretary of state directly to Mr. Roberts or to Mr. Higbee, and by the secretary of state, either before or after they had been copied into the well-bound book as stated, they were delivered to the public printer; that when said original journals were taken to the office of the public printer they were there separated, and the sheets distributed to compositors for the purpose of being printed, and when printed, returned to the office of the secretary of state; and if they had not previously been copied by the copyist into the well-bound book, were then copied by him into said book, and after such copying and printing no care was taken to preserve such original journals, and the same are now lost; and that it never was the practice until after 1872 to preserve the original journals of the legislature after they had been so as aforesaid copied into books to be kept in the office of the secretary of state, and so printed in the published journals.

32 And the court further finds that at the time of the adjournment sine die of said general assembly, on the morning of the 19th February, 1857, the proceedings in the senate of the 16th, 17th, 18th, and 19th days of February, 1857, had not been written out in full by the secretary of the senate, or by any one else, but were, for the first time, written out after the adjournment of the senate, and within ten days thereafter, by the proper officers of the senate, and they were transcribed in said well-bound book before being sent or taken to the public printer.

Tenth. That soon after the close of the session of the legislature for the year 1857 the journals of the house of representatives and of the senate were published by the secretary of state, which journals, as thus published, show the same proceedings in reference to said act in question as appear in the "well-bound book," and as are set forth in the certificate of the secretary of state, and none other. The printing of the journals of that session was done under the official supervision of the secretary of state, and he caused the printed journals to be compared with the original cap-paper journals, with a view of having them correct. It was his habit to compare the printed journals with the originals when he could conveniently do so, and when he could not, it was the duty of his assistants to do it. But the secretary of state
33 could not remember whether the portion of the printed journal relating to the statute in question was compared with the original by himself or his assistants, and it does not appear who compared that particular portion of the journal.

Eleventh. And we further find that the document offered in evidence by the defendant, being a certificate of the secretary of state, under his hand and the great seal of State, purporting to contain a full and complete copy of all the entries in the original journals of the senate for the year 1857, of the proceedings had in said senate relating to the act in question, was taken from said copy of the original journal, so appearing in said well-bound books, now in the office of the secretary of state.

Twelfth. And we further find that there is in the office of the secretary of state of the State of Illinois a series of books purporting to be and published as journals of the senate and house of representatives, labeled "Senate Journal of " (specifying the year) and "House Journal of ," as the sessions of the general assembly were from time to time held, from the year 1822 to the year 1874, of which series the well-bound book, above mentioned and labeled "Senate Journal, 1857," is one. But the court further finds that all of said books
34 in said series, made prior to the adoption of the constitution of 1848, and to the passage of the law of 12th February, 1849, in pursuance thereof, were in fact made by the secretary of the senate and the clerk of the house of representatives, and their respective assistants, as the original journals of said bodies respectively, or by the copyists appointed by the senate or house for that purpose, and by them deposited with the secretary of state as the original journals; and that all of said books in said series, made after the adoption of the constitution of 1848 and the passage of the law of 12th February, 1849, in pursuance thereof, are the works of the copyists, as hereinbefore stated. And that said entire series of books, by the usage of the respective secretaries of state, have always been treated as the official record of said journals respectively, and that so far as the evidence shows no other copies of such journals were ever preserved as official documents.

Thirteenth. And we further find the following to be true copies of the bond offered in evidence by the plaintiff of the certjficate of the auditor of public accounts endorsed thereon, and of the coupons attached thereto:

Bond.

No. 18.] UNITED STATES OF AMERICA. [$1,000.

STATE OF ILLINOIS.

Ten per cent. bond.

Town of Ottawa.

The town of Ottawa, in the county of La Salle, State of Illi-
35 nois, acknowledges itself indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum the said town of Ottawa promise to pay to the Ottawa, Oswego and Fox River Valley Railroad Company, or to the bearer hereof, at the Fourth National Bank, in the city of New York, seven years from the first day of July, A. D. 1869, with interest from the first day of July, A. D. 1869, at the rate of ten per cent. per annum, payable annually at said bank upon the presentation and delivery of the several coupons hereto annexed as they respectively become due; and to the payment of said principal and interest in the manner aforesaid the faith and revenue of said town is hereby irrevocably pledged.

This bond is one of a series of fifty bonds, bearing even date herewith, each for the sum of one thousand dollars, numbered from one to fifty inclusive, and is issued in pursuance of an election or special town meeting, held in said town on the third day of December, A. D. 1867, under and by virtue of a certain act of the legislature of the State of Illinois, approved February 18th, A. D. 1857, entitled "An act authorizing certain cities, counties incorporated towns, and townships to subscribe to the stock of certain railroads," the said act having special refer-
36 ence to the said Ottawa, Oswego and Fox River Valley Railroad Company, at which election or special town meeting a majority of the legal voters participating at the same voted "for subscription" to the capital stock of the Ottawa, Oswego and Fox River Valley Railroad Company, in the sum of fifty thousand dollars, and to issue the bonds of said town therefor; and the said election or special town meeting was by the proper authorities then and there declared duly carried "for subscription," previous application, in writing, of fifty legal voters of said town for such an election or special town meeting, specifying the amount to be subscribed and the conditions of such subscription, having been made to the clerk of said town, and the said town clerk having called said election or special town meeting, in accordance therewith, and having given due notice of the time and place of holding the same, as required by law and the act aforesaid.

In witness whereof the supervisor and town clerk of said town have hereunto set their hands and seals this first day of May, A. D. 1869.

WILLIAM REDDICK, [SEAL.]
Supervisor.

BENJAMIN M. ARMSTRONG, [SEAL.]
Town Clerk.

37 *Coupon.*

$100.] Town of Ottawa. [Interest warrant No. .

The town of Ottawa, State of Illinois, will pay to bearer, on the

day of July, A. D. , one hundred dollars, at the Fourth National Bank, in the city of New York, being one year's interest on the bond numbered above.

WILLIAM REDDICK,
Supervisor.

B. M. ARMSTRONG,
Town Clerk.

Certificate of registration.

AUDITOR'S OFFICE, ILLINOIS,
Springfield, August 17th, 1869.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

Fourteenth. That on the 13th day of July, A. D. 1877, the secretary of state of the State Illinois made a certificate and signed the same, and verified the same with the great seal of the State of Illinois;
38 which certificate was produced in evidence to the court by the defendant, and which certificate was and is as follows, to wit:

UNITED STATES OF AMERICA,
State of Illinois, ss:

OFFICE OF SECRETARY.

I, Geo. H. Harlow, secretary of state of the State of Illinois, do hereby certify that I am, as such secretary, the custodian of the original journals of the senate of the twentieth general assembly of the State of Illinois, at its regular session, begun and held at the city of Springfield, January 5, 1857, and that said journals now remain in my office; and that upon examination of the same I find the following proceedings entered therein, relating to a bill for "An act authorizing certain cities, counties, incorporated towns, or townships to subscribe to the stock of certain railroads," to wit:

(Journal of the senate.)

SATURDAY, *February* 14, 1857.

A message from the house of representatives, by Mr. Boal, a member.

Mr. PRESIDENT: I am directed to inform the senate that the house of representatives has passed bills of the following titles, to wit:

A bill for "An act authorizing certain cities, counties, incorporated towns, and townships to subscribe to the stock of certain railroads," in the passage of which I am instructed to ask the concurrence of the Senate.

39 MONDAY, *February* 16, 1857—7 o'clock p. m.

House bill for "An act authorizing certain cities, counties, incorporated towns, and townships to subscribe to the stock of certain

railroads," coming up, was read a first time and ordered to a second reading. On motion of Mr. Fuller the rule was suspended, the bill read a second time by its title and referred to the committee on banks and corporations.

And I do further certify that the foregoing extracts are a full and complete copy of all the entries upon said journal of proceedings had relating to said bill, or having any relation to a bill for an act with such title.

In witness whereof I hereunto set my hand and affix the great seal of the State, at the city of Springfield, this 13' day of July, A. D. 1877.

{ THE GREAT SEAL OF THE STATE OF ILLINOIS. }

GEO. H. HARLOW,
Secretary of State.

Fifteenth. And we further find that the following is a true copy of a stipulation of the defendant, offered in evidence by the plaintiff at the trial of said cause:

Stipulation.

It is hereby stipulated that the certified transcript presented by the defendant of the proceedings in the senate was taken from
40 the "well-bound book," in the office of the secretary of state, sometimes called the journal record, and marked "Senate Journal of 1857," being the same book mentioned in the opinion of the supreme court of Illinois, in the case of Miller et al. v. Goodwin, reported in 70 Ill. Rep., 659, and that the journal of the senate proceedings of that session, prepared by the secretary of the senate, and under the direction of the senate, and deposited with the secretary of state in parcels of folio paper, were lost before the year 1871; and also that there is not attached to said record journal or well-bound book any certificate by any officer or person that the same or any part thereof was ever compared with the journal as originally prepared by the secretary of the senate as aforesaid, or that said book or any part thereof is a true copy therefrom.

D. K. McRAE,
Att'y for Def't.

And the said cause having been heard before the undersigned John M. Harlan, circuit justice, and Henry W. Blodgett, district judge, holding the said circuit court, and we, the said judges, holding said court, having found and agreed upon the foregoing facts, were opposed in opinion:

1st. As to whether the act of February 18, 1857, was or ever became, a valid statute of Illinois; and

2nd. As to whether the said plaintiff upon said facts was en-
41 titled by law to recover in said action.

Wherefore, we certify the said facts and the said division of opinion to the supreme court for its determination.

And the said John M. Harlan, the presiding justice, being of the opinion that upon the foregoing facts the law of the case upon both of said questions is for the defendant, judgment is hereby entered for the

defendant, and this certificate of division is ordered to be entered of record.

JOHN M. HARLAN, [SEAL.]
Circuit Justice.
H. W. BLODGETT, [SEAL.]
Dist. Judge.

(Endorsed:) Filed July 30, 1879. Wm. H. Bradley, clerk.

On the same day, to wit, the 30th day of July, A. D. 1879, on the hearing of said cause, the following exceptions were taken by the said plaintiff, and allowed by the court, and made of record in said-entitled cause, to wit:

Plaintiff's bill of exceptions.

In the circuit court of the United States for the northern district of Illinois.

AMOSKEAG NATIONAL BANK
vs.
THE TOWN OF OTTAWA.

Be it remembered that upon the trial of this cause before the court, without the intervention of a jury,

42 The counsel for the defendant, to maintain the issues on his part, offered in evidence a certificate of the secretary of state of the State of Illinois, made and signed by said secretary of state in the year 1877, and verified by the great seal of State, certifying that such secretary was, at the time of making such certificate, the custodian of the original journals of the general assembly of said State at its session which commenced fifth January, 1857; that the said journals were then in his office; that the said certificate purported to contain a full and complete copy of all the entries in said original journal of the proceedings had in the senate at that session having any relation to the passage of the act of the legislature referred to in the bond offered in evidence by the plaintiffs, and which certificate showed the following and no other proceedings, to wit:

(Senate journal.)

12TH FEBRUARY, 1857.

A message from the house of representatives, by Mr. Bond, a member:

Mr. PRESIDENT: I am directed to inform the senate that the house of representatives has passed bills of the following titles, to wit:

"An act authorizing certain cities, counties, incorporated
43 towns and townships to subscribe to the stock of certain railroads."

16TH FEBRUARY, 1857.

House bill for an act (the same title as above) coming up was read a first time and ordered to a second reading. On motion of Mr. Fuller the rule was suspended, the bill read a second time by its title, and referred to the committee on banks and corporations.

The defendant further offered in evidence the printed copy of the journal of the senate of said year, published by the secretary of state, for the purpose of showing that the only proceedings had in relation to the act in question by the senate are those recited and set forth in said certificate of the secretary of state.

The plaintiff's counsel then and there objected to the introduction of the said certificate of said secretary of state as evidence, because—

1. It is not true in fact that the said secretary of state was, at the time of making said certificate, the custodian of the original journals of the senate for that year, or that the same were then in his office, or that the said certificate was made or transcribed from any original journal of the senate, or from any certified or compared copy thereof, or from any book or paper which itself, if present in court, would be evidence;

44 2. Because it is not competent to impeach an enrolled law by the certificate of the secretary of state; and

3. Because the defendant is estopped from proving, as against the plaintiff, an innocent holder of the bonds in suit, that the act recited on the face of said bonds was not passed in due form as required by the constitution of Illinois.

The plaintiff's counsel further objected to the introduction of the printed copy of said journal as evidence, because it is incompetent as evidence, has never been declared or held by the legislature or courts as evidence, and because the supreme court of Illinois has declared that it is not evidence of the contents of the original journal.

Whereupon, and in connection with said objections, the plaintiff's counsel offered in evidence the following stipulation of the defendant's counsel, to wit:

"It is hereby stipulated that the certified transcript presented by the defendant of the proceedings in the senate was taken from the "well-bound book" in the office of the secretary of state, sometimes called the Journal Record, and marked "Senate Journal of 1857," being the same book mentioned in the opinion of the supreme court of Illinois in the case of Miller et al. v. Goodwin, reported in 70 Ill. Rep., 659,

45 and that the journal of the senate proceedings of that session, prepared by the secretary of the senate, and under the direction of the senate, and deposited with the secretary of state in parcels of folio paper, were lost before the year 1871; and also that there is not attached to said record journal or well-bound book any certificate by any officer or person that the same, or any part thereof, was ever compared with the journal, as originally prepared by the secretary of the senate as aforesaid, or that said book, or any part thereof, is a true copy therefrom.

(Signed) D. K. McRAE,
Att'y for Def't.

The court then overruled the objections of the plaintiff's attorney to the admission in evidence of the said certificate of said secretary of state, and of the said printed copy of the journal of the senate, and admitted the same and both thereof in evidence, leaving their effect, the principles of law to be deduced therefrom, and how far they are to control an open question to be determined upon the whole evidence in the case.

To which ruling of the court the plaintiff's counsel then and there excepted, and the court allowed the said exceptions.

And because none of said matters otherwise appear the plaint-

46 iff prayed that these its exceptions might be signed and sealed, and made a part of the record in said cause, and it is hereby accordingly done.

JOHN M. HARLAN, [SEAL.]
Circuit Justice.
H. W. BLODGETT, [SEAL.]
Judge.

(Endorsed:) Filed July 30, 1879. Wm. H. Bradley, clerk.

On the same day, to wit, the 30th day of July, A. D. 1879, on the hearing of said cause the following exceptions were taken by the said defendant and allowed by the court and made of record in said entitled cause, to wit:

Defendant's bill of exceptions.

AMOSKEAG NATIONAL BANK
vs.
TOWN OF OTTAWA.

Bill of exceptions.

Be it remembered that upon a trial of this case the plaintiff produced and offered to read in evidence one bond for $1,000.00, dated May 1, 1869, signed and sealed by William Reddick, supervisor, and Benjamin Armstrong, town clerk, of the town of Ottawa, in and by which said town acknowledges itself indebted in the sum of $1,000,
47 which sum it promises to pay to the Ottawa, Oswego and Fox River Valley Railroad Company, or the bearer thereof, seven years from the first day of July, A. D. 1869, with interest from the first day of July, A. D. 1869, at rate of ten per cent. per annum, payable annually, on presentation of the coupons attached thereto. It was recited in said bonds as follows, to wit:

This bond is one of a series of fifty bonds, bearing even date herewith, each for the sum of one thousand dollars, numbered from one to fifty inclusive, and is issued in pursuance of an election or special town meeting, held in said town on the third day of December, A. D. 1867, under and by virtue of a certain act of the legislature of the State of Illinois, approved February 18th, A. D. 1857, entitled "An act authorizing certain cities, counties, incorporated towns and townships to subscribe to the stock of certain railroads, the said act having special reference to the said Ottawa, Oswego and Fox River Valley Railroad Company, at which election or special town meeting a majority of the legal voters participating at the same voted "for subscription" to the capital stock of the Ottawa, Oswego and Fox River Valley Railroad Company in the sum of fifty thousand dollars, and to issue the bonds of said town therefor; and the said election or special town meeting was, by
48 the proper authorities, then and there declared duly carried "for subscription," previous application, in writing, of fifty legal voters of said town for such an election or special town meeting, specifying the amount to be subscribed and the conditions of such subscription having been made to the clerk of said town, and the said town clerk having called said election or special town meeting in accordance therewith, and having given due notice of the time and place of holding the same, as required by law and the act aforesaid."

Plaintiff offered also to read in evidence certain interest warrants or coupons, each for the sum of one hundred dollars, and each cut from a bond of the same character, containing the same recitals and of the same series with the bond above described, and which severally matured and became due and payable on or before the 1st day of July, 1876, which coupons were substantially in the following form:

$100.] Town of Ottawa. [Interest warrant No. .

The town of Ottawa, State of Illinois, will pay to bearer on the day of July, A. D. , one hundred dollars, at the Fourth National Bank, in the city of New York, being one year's interest on the bond numbered above.

WILLIAM REDDICK,
Supervisor.

B. M. ARMSTRONG, *Town Clerk.*

49 On the production of these papers (the bond and coupons) by the plaintiff for evidence, it was admitted for the purposes of this trial by the defendant that William Reddick and Benjamin M. Armstrong, who signed the bond and coupons offered, were respectively supervisor and town clerk of the town of Ottawa at the time of signing the same, and that their signatures thereto are genuine, and that plaintiff bought the bonds and coupons so offered before the commencement of this action and before the maturity of the first instalment of interest on said bonds, paying full value therefor without actual notice of the alleged invalidity of the act of the legislature under which they were issued, and without actual notice of any defect or irregularity in their execution.

Thereupon defendant objected to the bond and coupons respectively being read in evidence, upon the following grounds:

First. That there was no statute of the State of Illinois authorizing the issue of such bond or coupons.

And defendant offered to prove and show to the court that the supposed act of February 18, 1857, mentioned in the recitals of said bond, was never passed by the senate of the general assembly of the State of Illinois, and that no vote was taken in the senate on the passage
50 of the same by ayes and nays and entered upon the journals as required by the constitution.

Second. That the bonds upon their face were payable to the Ottawa, Oswego and Fox River Valley Railroad Company, or bearer thereof; and that by the laws of Illinois such bonds were not transferable without an endorsement in writing on the back of the bonds by the payee assigning the same to the purchaser.

The court refused to hear the proof offered by the defendant in this regard at that stage of the trial, and no other evidence being then offered in support of the bonds, the court overruled the objection of the defendant and admitted the bonds and coupons so offered to be read in evidence, which was done.

And to each of these rulings of the court the defendant excepted at the time when the same were respectively made.

After the bonds and coupons were read in evidence, the defendant put in evidence the printed journals of the house and senate of the general assembly of the State of Illinois so far as relates to the proceedings in the senate in relation to a bill for said supposed statute on the four-

teenth day of February, 1857, and on the subsequent days of that session.

The defendant also read in evidence the certificate of the secretary of state, a copy of which is set out in the findings of the
51 court filed herein on page 38 of this transcript.

After said transcript, so authenticated by the secretary of state, under the seal of State, was read in evidence, plaintiffs offered to prove by the testimony of witnesses the written stipulation of defendant that the said certificate of the secretary of state as to the journal of the senate was not transcribed from the original journal of the senate made by the secretary of the senate or his clerks upon cap-paper, but was transcribed from a book remaining in the office of the secretary of state, being the "well-bound book" spoken of in the opinion of the supreme court of Illinois in the case of Miller et al. vs. Goodwin, 70 Ill., 659.

To this testimony the defendant objected when it was offered, and insisted that the statements of the certificate, authenticated under the seal of State, could not be contradicted by parol, and that it was not competent to prove that the book or books from which the extracts in that certificate were transcribed were not the original journals, as declared in the certificate; but the court overruled said objection and admitted testimony tending to prove that proposition. To which ruling of the court defendant then and there excepted.

52 The plaintiff also on the trial offered in evidence the testimony of certain witnesses tending to show that the act in question (of February 18th, 1857) was passed as the constitution required, and that the transcript in the well-bound book or journal record spoken of was, or at least might be, defective in not containing a true and full account of the proceedings of the senate in reference to the question of the passage of that bill, and in not being a full and correct copy or record of the original journal (so called by plaintiff).

To the introduction of this testimony the defendant objected as incompetent to impeach the certificate of the secretary of state or the character of the well-bound book. But the objection was overruled by the court, and the testimony admitted to be considered with other evidence in the case.

To this ruling of the court the defendant excepted when the same was made.

And also on the trial of said issues plaintiff offered parol testimony, tending to suppose that the supposed act of February 18, 1857, was on file in the office of the secretary of state as an enrolled law in the year 1857 and from that time hitherto. To this evidence defendant objected when the same was offered, but the court overruled the objection and admitted such proof; and to this ruling defendant then and there excepted.

53 And also on the trial plaintiff offered in evidence the testimony of witnesses to prove the mode in which the journal of the senate for the session begun January 5, 1857, was made, and the mode in which the record of the journal was made, and as to whether the manual labor of writing up the record was done by sworn officers, and tending to prove that they were not sworn. To every part of the above testimony defendant objected when the same was offered, but the court overruled the objections, and the testimony was admitted by the court, and to this ruling the defendant excepted when the same was made.

And the plaintiff offered evidence tending to prove that the record

of the journal of the senate found in the well-bound book remaining with the secretary of the State was not compared by the secretary of state in person with the original draft of the journal prepared by the secretary or journalist of the senate; to which testimony defendant objected as incompetent when the same was offered; but the court overruled this objection and received the testimony, and to this ruling defendant then and there excepted.

And on the trial the court permitted plaintiff, against the objection of defendant, to introduce the testimony of Roberts, tending to prove
54 that the persons who superintended the copying of the senate journal in question into the journal record were not the same person or persons with whom the secretary had contracted to do this work, but that the work was done by other persons with the sanction of the secretary of state, and with the acquiescence of the secretary of the senate, and to this ruling of the court defendant excepted then and there.

And on the trial plaintiff was permitted by the court (against the objection of defendant) to give in evidence the testimony of a witness, tending to prove that many bills were passed on the sixteenth of February, 1857, by the senate in a peculiar mode (commonly called an omnibus) by calling the ayes and noes but once upon the passage of many bills. To this defendant objected as immaterial and as incompetent when the same was offered, but the court overruled the objection, and defendant then and there excepted, and under the ruling the testimony was received.

And defendant asks the court to sign and seal this bill of exceptions and make the same a part of the record, which is done before the verdict and judgment in this case.

JOHN M. HARLAN, [SEAL.]
Circuit Justice.
H. W. BLODGETT, [SEAL.]
Dist. Judge.

(Endorsed:) Filed July 30, 1879. Wm. H. Bradley, cl'k.

55 And on the same day, to wit, the 30th day of July, A. D. 1879, said plaintiff, by its attorneys, filed in said clerk's office its bond in said-entitled cause; which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, The Amoskeag National Bank of Manchester, in the State of New Hampshire, as principal, and Isaac G. Wilson and Sanford B. Perry, of the State of Illinois, as sureties, are held and firmly bound unto the town of Ottawa, in the county of La Salle and State of Illinois, in the sum of five hundred dollars to be paid to the said town of Ottawa or its assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this thirtieth day of July, A. D. 1879.

Whereas lately, at a term of the circuit court of the United States in and for the northern district of Illinois, held at Chicago, in a suit depending in said court between the said Amoskeag National Bank, as plaintiff, and the said Town of Ottawa, as defendant, a judgment was rendered against the said plaintiff, and the said plaintiff having prayed for a writ of error to review said proceedings in the Supreme Court

56 of the United States, and having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the Town of Ottawa aforesaid citing and admonishing it to be and appear at the term of the Supreme Court of the United States to be held at Washington on the second Monday of October, A. D. 1879:

Now the condition of the above obligation is such that if the said Amoskeag National Bank shall prosecute its said writ of error to effect, and answer all costs and damages if said bank shall fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.] AMOSKEAG NATIONAL BANK,
By MOODY CURVIER, [SEAL.]
President.
ISAAC G. WILSON. [SEAL.]
SANFORD B. PERRY. [SEAL.]

Sealed and delivered in presence of—
EDW'D M. BROOKS.

Approved July 30th, 1879.

JOHN M. HARLAN.

(Endorsed:) Filed July 30, 1879. Wm. H. Bradley, clerk.

57 NORTHERN DISTRICT OF ILLINOIS, *sct:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a correct and complete transcript of the record of all the proceedings had in said court in the cause wherein the Amoskeag National Bank is the plaintiff and Town of Ottawa is the defendant, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this twentieth day of August, A. D. 1879, and of our Independence the 104th.

[SEAL.] WM. H. BRADLEY, *Clerk.*

58 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, of a plea which is before you in said circuit court between the Amoskeag National Bank, plaintiff, and Town of Ottawa, defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said The Amoskeag National Bank, as by its complaint appears, and it is being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1879, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct

that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this thirtieth day of July, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the 104th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsed:) Supreme court of the United States. vs.
Writ of error.

59 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To the Town of Ottawa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, A. D. 1879, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein The Amoskeag National Bank is plaintiff in error, and you are the defendant in error, to show cause, if any there be, why the error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett this thirtieth day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

H. W. BLODGETT, *Judge.*

60 I hereby accept service of the within citation this thirtieth day of July, A. D. 1879.

S. W. CHEEVER,
Supervisor of the Town of Ottawa.

(Indorsed:) Supreme Court of the United States. Amoskeag National Bank vs. Town of Ottawa. Citation to October term, A. D. 18 .

61 UNITED STATES OF AMERICA:

In the Supreme Court of the United States, of the October term, A. D. 1879.

THE AMOSKEAG NATIONAL BANK, PLAINTIFF in error,
vs.
TOWN OF OTTAWA, DEFENDANT IN ERROR. } No. 810.

Assignment of errors.

And now the said The Amoskeag National Bank, plaintiff in error, comes and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1. The circuit court erred in admitting testimony on behalf of the defendant and against the objections of the plaintiff.
2. The said court erred in giving judgment for the defendant.
3. The said court erred in not finding the issues and entering judgment for the plaintiff.